

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANLEY F. FROMPOVICZ d/b/a FAR	:	CLASS ACTION COMPLAINT
AWAY SPRINGS, on behalf of himself and	:	
all others similarly situated	:	CIVIL ACTION
	:	
Plaintiffs,	:	No. 2:18-cv-00054-WB
	:	
v.	:	
	:	
NIAGARA BOTTLING, LLC, et al.	:	
	:	
Defendants.	:	

DEFENDANTS ICE RIVER SPRINGS WATER CO. INC., CROSSROADS BEVERAGE
GROUP AND JAMES J LAND, JR.'S MOTION TO DISMISS
PLAINTIFF'S CLASS ACTION AMENDED COMPLAINT

Defendants Ice River Springs Water Co. Inc., Crossroads Beverage Group and James J. Land, Jr. (collectively "Movants"), by and through their undersigned counsel hereby file this Motion to Dismiss Plaintiff's Amended Class Action Complaint under Fed. R. Civ. P. 12(b)(6) as:

(1) Plaintiff does not have the right to sue Ice River Springs Water Co. Inc. and Crossroads Beverage Group under the Lanham Act as they are not the proximate cause of his alleged injury;

(2) Plaintiff cannot establish a claim as a matter of law against James J. Land, Jr. under the Lanham Act as he does not sell the same product as Plaintiff and has not been alleged to have made any misleading representations of goods or services that were "used in commerce" as is necessary to establish a claim under the Lanham Act; (3) the claim for unfair competition fails as a matter of law against Movants; (4) the claim for unfair competition is preempted by the Food, Drug and Cosmetic Act; and (5) Plaintiff is not entitled to injunctive relief.

In support of their Motion to Dismiss, Movants rely on and incorporate herein the accompanying Brief and exhibits.

WEIR & PARTNERS LLP

By: /s/ Brett A. Datto
BRETT A. DATTO, ESQUIRE
LAUREN N. SCHWIMMER, ESQUIRE
1339 Chestnut Street, Suite 500
Philadelphia, PA 19107
brett.datto@weirpartners.com
lschwimmer@weirpartners.com
(215) 665-8181
Counsel for Defendants, Ice River Springs
Water Co. Inc., Crossroads Beverage Group
and James J. Land, Jr.

Dated: July 25, 2018